IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.902 OF 2004

Starsland Processors & Developers
& Ors. ... Appellants

V/s.

Shri Yeshwant Rajaram Sawant & Anr. ... Respondents

Mr.S.M. Oak for Appellants
Mr.J.Reis for Respondent No.1
Mr.J.Xavier for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 27, 2004**

P.C.:

. This Appeal from Order has been filed by the appellants who are the defendants in the suit filed before the Bombay City Civil Court. Appeal No.1 appears to be a Developer. Appellant Nos.2, 3 and 4 are the partners of Appellant No.1. The Notice of Motion taken out by the respondents in the City Civil Court has been made absolute in terms of prayer clause (a). However, the order does not affect the right of Defendant No.2 in respect of entering his structure on the suit property and his access to it.

2. Mr.Oak, appearing for the appellants, vehemently submits that no such order ought to have been passed by

the City Civil Court since the plaintiffs had based their claim on a lease deed under which the Respondent-Municipal Corporation had leased the suit property to them for a period of 30 years. According to Mr.Oak, even though the lease deed was not produced before the trial Court, it granted an injunction merely on the basis of the lacunae in the defendants' case. He submits that Appellant No.1 is the power of attorney holder of persons claiming to be the heirs of one Pawashya Mashya Koli, who was the original owner of the suit land. The learned Advocate submits that the appellants are in possession of the suit lands which are being cultivated. He relies upon a 7/12 extract to submit that at least till the year 1984 the tenants were cultivating the land.

3. The trial Court has considered the fact that the lands in question had been acquired and compensation has been awarded to the owner Pawashya Mashya Koli wayback in the year 1964. Till today, there has been no challenge to the acquisition of the land nor is their any claim made for enhancement of the compensation. According to the Respondents the awarded amounts have already been received by Pawshya Koli and/or his heirs and Legal Representatives.

4. Possession receipt is also produced showing that

the possession of the suit lands was handed over to Pawashya Mashya Koli on 27.11.1964 to the Surveyor on behalf of the Special Land Acquisition Officer. Therefore, the contention of Mr.Oak that the appellants were entitled as the constituted attorneys of the heirs of Pawashya Mashya Koli to any relief cannot be accepted. His insistence that the lease deed should be produced also is without any substance since the Respondent-Corporation has in its affidavit before the trial Court indicated that there is a resolution of the Corporation under which land has been granted to the respondents on a lease. This resolution is dated 11.3.1996. It does not appear from the record that the appellants have either challenged the possession receipt or the fact that such a resolution has been passed by the Corporation.

5. In such circumstances, Appeal from Order is rejected.

6. In view of the rejection of the Appeal from Order, Civil Application No.1231 of 2004 does not survive and the same is disposed of accordingly.